IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1151 OF 2005

Union of India & Ors. ...Petitioners.
Versus
Raju S. More ...Respondent.

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Mr.N.V.Masurkar with Mr.Y.S.Bhate & D.A.Dubey i/b. Dr. T.C.Kaushik Advocates for the Petitioners.
Mr.G.K.Masood with Ms.S.R.Sawant, Advocates for Respondent.

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CORAM : **F.I.REBELLO AND SMT.V.K.TAHILRAMANI,JJ.**

DATED : **JULY 11, 2006.**

P.C.:

. Rule. Heard forthwith.

2. The Union of India, which was Respondent in the Original Application filed by Respondent herein, had challenged the direction of the Tribunal, directing that the case of the Respondent be covered in terms of directions issued in disposed of Original Application of Santosh M.Wadkar in O.A.No.143 of 2003 and other O.As. which were disposed of by order dated 21st July, 2003.

3. In the case of Santosh Wadkar, the Tribunal

noted the contention as urged on behalf the petitioners herein that there was cadre restructuring proposal going on and the Government of India issued directions on 7th August, 2001 that no appointment shall be made on adhoc basis by direct recruitment from open market. Considering the peculiar circumstances, the Tribunal has observed that as and when the petitioners go for recruitment from the open market to the post of Sepoys, they should first consider the applicants for such appointments, as the applicants have undergone the selection process and also undergone the medical examination. In these circumstances, the Tribunal found that the only direction given considering the policy decision of the Government of India was as and when the Ministry of Finance permitted the Respondents to make recruitment for the post of Sepoy, first preference shall be given to the applicants before it. The same direction was also issued in the case of the Respondent herein.

4. There is no dispute that cadre restructuring proposal was carried out. The letter of 13th May, 2003 indicates that the posts of Sepoys in the Mumbai Custom House had become

surplus by 386 (329 Sepoys working on regular basis and 57 Sepoys working on adhoc basis). On behalf of the Respondent the learned Counsel submits that once the Respondent was issued letter of offer of appointment, it was not open to the petitioner to have unilaterally withdrawn the said order or not to make an appointment.

5. We have heard learned Counsel for the parties. Mere selection or issuing an offer of appointment confers no right in the respondent to be appointed unless the appointing authority select some from the select list and exclude others. It is always open to the appointing authority not to proceed to issue letter of appointment as long as the action is not arbitrary. It is only in the event the respondents are able to point out that action is arbitrary or malafide or the like, would Courts interfere in the action of the petitioners. In the instant case, just like Wadkar's case which order is also under challenge in another Writ Petition, admittedly material was produced before the Tribunal to indicate that there were no posts based on cadre restructuring. Directions had also been issued by the Government of India, not to

make appointments. It is in these circumstances that the petitioners contend that the Tribunal was wrong in issuing the directions as issued.

6. We are in agreement with the stand taken by the petitioners. In the first instance, the respondent had no right. Secondly, even if the select list was prepared that select list cannot continue forever. In instant case the selection was done in the year, 2000. The effect of the direction would be that persons like the respondent because they were earlier selected would have an indefinite right for consideration for appointment even after passage of several years. This would defeat the right of those others who have in the meantime become eligible and would defeat the object of Article 14. In the public employment all eligible as on the date of recruitment will have to be considered. No persons can claim exclusive right, that once they were selected, even if the Union of India decides not to go ahead with the process of appointment, that their names will remain on the select list, till such time that the Union of India decides to fill in the posts. The Tribunal was wrong in issuing the directions as issued. We are clearly

therefore of the opinion that the impugned order is liable to be set aside.

7. However, there is only another aspect in the matter of hardship, that will be caused to the respondent, if the petitioners decide to carry out the exercise for filling in the post of Sepoy. If at that time of such interviews if persons like the respondent are age-barred, then on its peculiar facts of the case that should not come in their way for consideration by the petitioners on the special facts and circumstances of this case. It may be mentioned that this direction is only in respect of those who were selected and issued letter of appointment as also the Respondent here.

8. With the above observation, the impugned order is set-aside. Petition is allowed. Rule made absolute accordingly. However, there shall be no order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]